UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. CASE NO.: 8:03-CR-77-T-30-TBM

SAMI AMIN AL-ARIAN,
HATEM NAJI FARIZ

UNITED STATES' CONSOLIDATED RESPONSE IN OPPOSITION TO DEFENDANT AL-ARIAN'S AND FARIZ'S RENEWED MOTIONS FOR JUDGMENT OF ACQUITTAL

The United States of America by Paul I. Perez, United States Attorney, Middle District of Florida, respectfully submits this consolidated response in opposition to defendant Al-Arian's and Fariz's Renewed Motions for Judgment of Acquittal (Docs. 1478 and 1480).[1] The defendants' instant motions are filed pursuant to Federal Rule of Criminal Procedure 29(c) and essentially reiterate arguments that this Court has already twice rejected. Just as with their original motions, the defendants' renewed motions are without merit and should be denied in their entirety.

PROCEDURAL HISTORY

On October 12 and October 27, 2005, respectively, the Court flatly denied defendants Al-Arian's and Fariz's oral motions for judgment of acquittal under Rule 29(a) with respect to all counts except for the Travel Act counts.[2] On November 2, 2005, at the close of the evidence in the case, the Court again denied both defendants' oral motions.

---

[1]Defendant Al-Arian has adopted defendant Fariz's motion (Docs. 1479 and 1483).

[2]The Court granted judgment of acquittal on Counts Thirteen and Sixteen and reserved judgment on the remaining Travel Act counts.

On December 6, 2005, the jury acquitted defendant Al-Arian of conspiracy to murder persons abroad in violation of 18 U.S.C. § 956(a) (Count Two); use of a facility in interstate or foreign commerce in violation of 18 U.S.C. § 1952(a) (Counts Eight and Seventeen); provision of material support to an FTO in violation of 18 U.S.C. § 2339B (Counts Twenty-Seven through Twenty-Nine); obstruction of justice in violation of 18 U.S.C. § 1505 (Count Forty-Six); and obstruction of justice in violation of 18 U.S.C. § 1503 (Count Fifty-Three). The jury acquitted defendant Fariz of conspiracy to murder persons abroad in violation of 18 U.S.C. § 956(a) (Count Two); use of a facility in interstate or foreign commerce in violation of 18 U.S.C. § 1952(a) (Counts Twelve, Fourteen, Fifteen, Eighteen, Nineteen and Twenty-One); provision of material support to an FTO in violation of 18 U.S.C. § 2339B (Counts Twenty-Two through Thirty-Two); and money laundering in violation of 18 U.S.C. § 1956(a)(2)(A) (Counts Thirty-Four through Thirty-Seven and Forty-One through Forty-Three).

With respect to both defendant Al-Arian and defendant Fariz, the jury failed to reach a unanimous verdict on Count One (conspiracy to violate RICO in violation of 18 U.S.C. § 1962(d)); Count Three (conspiracy to provide material support to an FTO); Count Four (conspiracy to violate IEEPA); and Counts Thirty-Eight through Forty (money laundering in violation of 18 U.S.C. § 1956(a)(2)(A)). The jury also failed to reach a unanimous verdict against defendant Al-Arian on Counts Seven and Nine (use of a facility in interstate or foreign commerce in violation of 18 U.S.C. § 1952(a)); and Count Forty-Four (attempt to procure citizenship or naturalization unlawfully in violation of 18 U.S.C. § 1425(a)). The jury failed to reach a unanimous verdict against defendant Fariz on Count Twenty (use of a facility in interstate or foreign commerce in violation of

18 U.S.C. § 1952(a)) and Count Thirty-Three (money laundering in violation of 18 U.S.C. § 1956(a)(2)(A)).

LEGAL STANDARD

In evaluating a defendant's motion for judgment of acquittal, the Court must determine whether, viewing the evidence in the light most favorable to the government, a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt. United States v. Cole, 755 F.2d 748, 755 (11th Cir. 1985). Furthermore, "[i]t is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt." United States v. Killingsworth, 719 F.2d 1130, 1131 (11th Cir. 1983) (quoting United States v. Bell, 678 F.2d 547, 549 (5th Cir. 1982)).

ARGUMENT

A. The Jury's Verdicts Of Acquittal On Some Counts Are Irrelevant To The Court's Consideration Of Rule 29 Motions On The Remaining Counts.

Throughout their motions, in a new argument, defendants Al-Arian and Fariz essentially ask the Court to acquit them of those charges upon which the jury could not reach a unanimous verdict simply because the jury acquitted them and their co-defendants on other charges. The United States Supreme Court, however, has squarely rejected the proposition that jury verdicts of acquittal on some counts justify granting a judgment of acquittal on charges that were not resolved by jury verdict. See United States v. Powell, 469 U.S. 57, 67 (1984); Dunn v. United States, 284 U.S. 390, 393 (1932).

Longstanding controlling precedent holds that "[e]ach count of an indictment is regarded as if it were a separate indictment." Dunn, 284 U.S. at 393. An acquittal on

one count, therefore, cannot be pleaded as *res judicata* regarding another. Id. In addition, courts have long recognized that criminal juries in the United States acquit not only because the prosecution has failed to prove guilt beyond a reasonable doubt, but also based on "compromise, confusion, mistake, leniency or other legally and logically irrelevant factors." United States v. Espinosa-Cerpa, 630 F.2d 328, 332 (5th Cir. 1980) (citing Dunn v. United States, 284 U.S. 390, 393-94 (1932)). "Consequently, an acquittal is not to be taken as the equivalent of a finding of the fact of innocence; nor does it necessarily even reflect a failure of proof on the part of the prosecution." Id. at 332; see also, Dunn, 284 U.S. at 393.

For these reasons, established federal law flatly prohibits district courts from considering a jury verdict of acquittal to evaluate the merits of a motion for judgment of acquittal under Rule 29. Powell, 469 U.S. at 67 ("[Sufficiency of the evidence] review should be independent of the jury's determination that evidence on another count was insufficient."); see also United States v. Kramer, 73 F.3d 1067, 1071 n.7 (11th Cir. 1996). As the Fourth Circuit explained:

> When the district court reviews the sufficiency of the evidence on a charge, it should compare the government's evidence against the elements of the charged offense, but it should not consider the jury's verdict that the evidence was insufficient on another charge. United States v. Powell, 469 U.S. 57, 67 (1984).

United States v. Mackins, 32 F.3d 134, 138 (4th Cir. 1994) (reversing grant of defendants' Rule 29 motion in part because the district court based its ruling on the jury's acquittal of the defendant on other charges).

This Court therefore may not assume, as the defendants request, that the jury's verdicts of acquittal on some counts mean that the government presented insufficient

evidence to support convictions on the mistried charges. Rather, the Court must determine – independently of the jury's verdicts on other counts – whether the government presented sufficient evidence at trial such that a reasonable fact-finder could find the defendants guilty on the remaining charges beyond a reasonable doubt.[3]

Likewise, and contrary to the defendants' argument, the fact that the jury acquitted the defendants on an underlying substantive count is not relevant to a determination of the sufficiency of proof of a related conspiracy or facilitation count.[4] See, e.g., Powell, 469 U.S. at 67-68 (rejecting argument that judicial acquittal should be granted on a "compound felony" where the jury acquits on the "predicate felony"); United States v. Alerre, 430 F.3d 681, 2005 WL 3213303, at *9 (4th Cir. Dec. 1, 2005); United States v. Reed, 875 F.2d 107, 112 (7th Cir. 1989) (holding that a jury acquittal on substantive charges has no impact on the sufficiency of proof of a related conspiracy charge). As a legal matter, the government is not required to prove that the defendant personally committed a substantive crime in order to prove that the defendant conspired with others to commit the crime or participated in the RICO enterprise intending that others would commit the crime. Alerre, 2005 WL 3213303, at *9. Accordingly, the

---

[3]Defendant Al-Arian obliquely refers to "double jeopardy implications" without explaining exactly what those implications are. While the United States reserves the right to fully respond to defendant Al-Arian's argument once it is properly stated, we note that the Supreme Court has long held that there is no double jeopardy bar to retrial of a criminal defendant of charges upon which the jury failed to reach a verdict. Richardson v. United States, 468 U.S. 317, 326 (1984). On January 3, 2006, co-defendant Hatem Naji Fariz filed a motion to dismiss the counts remaining against him on the basis of the doctrine of "collateral estoppel," which is grounded in the Fifth Amendment. That motion will be responded to separately.

[4]Courts have rejected claims that the acquittal of some co-conspirators on a charge requires a grant of acquittal to the remaining co-conspirators. Espinosa-Cerpa, 630 F.2d at 332.

Count cannot infer that the evidence was insufficient on Counts One, Three or Four simply based on the jury's acquittal of the defendants on particular substantive counts.

B. The Government Presented Sufficient Proof Against Both Defendants On The Remaining Counts For A Reasonable Jury To Find Them Guilty Beyond A Reasonable Doubt.

Once the defendants' arguments based on impermissible inferences from the jury's verdicts are removed, the remainder of their motions merely reiterates arguments that the Court rejected at the close of the government's case and at the close of all evidence. For the same reasons that the Court denied their earlier motions, the Court should deny the instant motions. In short, the United States presented abundant evidence proving both defendants' guilt of the remaining charges beyond a reasonable doubt. To address defendants' renewed contentions, the United States relies upon and incorporates by reference all of its prior arguments made during the Court's hearings on the defendants' prior Rule 29 motions.[5] Below, we address the few new arguments that the defendants now advance.

1. Defendant Al-Arian

With respect to Count One (RICO conspiracy), defendant Al-Arian primarily relies on the jury's acquittal of Count Two to argue that the evidence on Count One was insufficient. As explained above, this argument is without merit because the jury's acquittal is irrelevant to the Court's consideration of the sufficiency of the evidence on the remaining counts. Powell, 469 U.S. at 67.

[5]Likewise, defendant Al-Arian's assertion that the Court should grant him acquittal on Count One based on jury verdicts of acquittal on substantive charges of provision of material support to a foreign terrorist organization under 18 U.S.C. § 2339B is erroneous, especially since the jury failed to reach a verdict on Count Three which charges conspiracy to provide material support to a foreign terrorist organization.

Even if this were not the applicable legal standard, defendant Al-Arian's argument that "as a result of the jury's verdict [on Count Two], [he] can never be tried on charges where an essential element of those charges is a conspiracy to commit murder and mayhem" is still wrong (Doc. 1480 at 8-9). Conspiracy to commit murder abroad under 18 U.S.C. § 956 was only one of eight alleged racketeering activities under Count One and is not implicated at all in the other counts on which the jury hung. Moreover, the essential elements of a violation of section 956 are different from those required to prove a violation of RICO conspiracy under Count One. Thus, the jury's verdict on Count Two is irrelevant to a determination of the viability of Count One.

Moreover, the evidence showed that defendant Al-Arian knowingly participated in the PIJ, a RICO enterprise, by serving as an active member of the governing Shura Council. He established cover organizations in the United States to provide safe harbor, facilities and employment for PIJ leaders; assisted the PIJ to resolve its overall financial crisis with the goal of allowing it to resume its violent operations; and solicited and transferred funds to pay the pension program for the families of PIJ murderers and prisoners. See, e.g., GXs 88 and 132. As the head of ICP, he was publicly identified as the leader of the "active arm of the Islamic Jihad Movement in Palestine" (GX 565). After the designations of the PIJ and its leaders as Specially Designated Terrorists in January 1995, he and his co-conspirators withdrew PIJ funds from bank accounts to protect its assets from government seizure (GX 149). On February 10, 1995, defendant Al-Arian wrote a letter to a Kuwaiti soliciting funds to continue the terrorist acts (GX 516). On February 12, 1995, defendant Al-Arian inquired of Ahmad Makki whether his people could provide a safe haven for PIJ leaders if "they increase pressure on them"

(GX 931). Defendant Al-Arian then continued to participate in the PIJ enterprise as a high-level leader by having Ramadan Shallah transmit his ideas and accounts of his PIJ-related activities to the overseas leadership (GXs 928, 954A, 956, 958, 959, 972, 988 and 997). He continued to assist the PIJ in resolving financial problems by pressuring the PIJ's former treasurer, Mohammed Tasir Al-Khatib, to return PIJ funds (GXs 943, 1014 and 1019). In February 1995, he even represented the PIJ in a meeting with HAMAS members in the United States (GX 958). Defendant Al-Arian took action to protect the United States' PIJ cell upon learning of the arrest of PIJ leader Sulieman Odeh by the Israelis (GXs 931, 943, 1003, 1005 and 1023). On March 22, 1995, defendant Al-Arian transferred $3,500 from Account 15 to Ramadan Shallah's Account 42 (GX 110). On March 21, 1995, Shallah sent a $10,000 wire-transfer from Account 42 to Ehab Bseisso's account in Springfield, Massachusetts (GX 140). The evidence showed these funds were forwarded to PIJ operatives in Gaza for distribution to PIJ families, including the family of the terrorist responsible for the suicide attack at Netzarim Junction on November 11, 1994. Through the date of the first Indictment, defendant Al-Arian actively continued to conceal the past and current PIJ's activities in the United States, and he participated and facilitated defendant Fariz's fundraising for the PIJ. See, e.g., GXs 1158, 1159, 1162 and 1177.

Furthermore, the evidence showed that throughout this entire period, defendant Al-Arian knew that the PIJ's goal was to extort land from the inhabitants of Israel through murders and other violent attacks and approved of the PIJ's criminal objective and methods. He received claims of responsibility of PIJ attacks by fax from PIJ headquarters and sent praise back to PIJ headquarters. See, e.g., GXs 913 and 915.

He and Fawaz Damrah even used them to encourage fundraising at ICP events. See, e.g. GXs 565, 566 and 568. All this evidence proves defendant Al-Arian's knowing participation in the enterprise and his agreement that co-conspirators would commit various racketeering activities including international money laundering, provision of material support and conspiracy to murder and extort under Florida law.

With respect to Count Three (conspiracy to provide material support to an FTO), defendant Al-Arian does not bother to make any argument particular to him, but merely adopts the arguments made by defendant Fariz. The evidence that establishes his participation in the RICO conspiracy also is sufficient to establish his guilt as to Count Three. The FISA communications show that, through coded conversations, he continued to cause the receipt and transfer of PIJ money well into August 2000, three years after the PIJ was designated as an FTO (GXs 1071 and 1077, 1078). As late as 2002, defendant Al-Arian participated in at least one fundraising session with defendant Fariz to raise money for the PIJ and otherwise helped and advised Fariz in his fundraising efforts. See, e.g., GXs 1156, 1157, 1158, 1159, 1162 and 1177. All of this evidence provides a sufficient basis for a jury to find defendant Al-Arian guilty beyond a reasonable doubt on Count Three.

With respect to Count Four (conspiracy to violate IEEPA), defendant Al-Arian first points to the jury verdict on Counts Twenty-Seven through Twenty-Nine, which allege specific violations of a different statute, 18 U.S.C. § 2339B, and he then generally asserts the lack of proof of this count. As explained in responses to defendant Al-Arian's previous motions and above with respect to Counts One and Three, the FISA communications establish that defendant Al-Arian conspired to deal in the property of

the PIJ starting as early as 1988 and continuing past the designation of the PIJ in January 1995. In fact, on the very day that they learned of the designation, defendants Al-Arian and Mazen Al-Najjar withdrew approximately $90,000 from six of their accounts that had been primarily funded with PIJ money from overseas, and they then redeposited some of the funds several weeks later or shifted them to other accounts (GX 149). Moreover, defendant Al-Arian's continued assistance to defendant Fariz and participation in an American Muslim Care Network's fundraising session shows his continuing agreement to provide contributions to the PIJ. Thus, defendant Al-Arian's argument on this count fails as well.

With respect to Counts Seven and Nine (Travel Act), defendant Al-Arian again incorrectly relies on the jury verdict on Count Two and then argues the evidence was insufficient because the money was for attorney's fees in the Mazen Al-Najjar hearings. The evidence showed that these two telephone communications facilitated the unlawful activity of money laundering. Count Seven involved a coded telephone call between defendant Al-Arian and Bashir Nafi in England, a fellow member of the PIJ Shura Council. Defendant Al-Arian asked Nafi if he knew whether the "magazines" had been sent, referring to money. They then discuss the difficulty in finding someone to receive the money (GX 1077). Count Nine involved a coded conversation, about two weeks after the conversation with Nafi, between defendant Al-Arian and Abu Omar, the recipient of the funds (GX 1079). Defendant Al-Arian asked Abu Omar if he "received anything to [his] account or to [his] wife's account?" Abu Omar replied "ten shirts." Defendant Al-Arian then arranged for the transfer of the funds to a third party. Special Agent Kerry Myers testified that this transfer was consistent with the amount that co-

conspirator Al-Najjar would have been owed by the PIJ as a detainee. Thus, the evidence is sufficient to establish that defendant Al-Arian's efforts to obtain the PIJ money for Al-Najjar would facilitate the carrying on of money laundering.

Defendant Al-Arian presents no additional legal arguments with respect to his renewed request for acquittal on Counts Thirty-Eight through Forty (international money laundering) or Count Forty-Four (attempted naturalization fraud). See Doc. 1480 at 12.

2. Defendant Fariz

With respect to each of the counts remaining against him, defendant Fariz primarily argues that there was no evidence that he sent money to the PIJ or intended to further the PIJ's unlawful activities. The Court has already rejected both of these arguments twice and nothing has changed since the close of the evidence to justify a change in the Court's prior ruling. Although the United States incorporates by reference its prior arguments, we will address this contention below.

Abundant evidence shows that defendant Fariz repeatedly sent money to the PIJ totaling nearly $60,000. Government Exhibit 198 summarizes sixteen international money transfers to persons associated with the Elehssan Society in the Gaza Strip, a PIJ organization that accepts donations on behalf of the PIJ and that provides services to PIJ members to facilitate and promote the PIJ's violent activities.[6] Ziad Abu-Amr testified that it is common knowledge in the Gaza Strip that the Elehssan Society is affiliated with the PIJ (GX 9). Government Exhibit 214 explicitly establishes that the Elehssan Society is the PIJ's primary fundraising arm. Government Exhibit 214 is an official PIJ document, complete with the PIJ logo, that was retrieved from a PIJ website

[6]The individual receipts are in evidence as GXs 195, 605 and 606.

in July 2001, months before defendant Fariz began sending money to the Elehssan Society. Government Exhibit 214 asks viewers to "Donate for the Jihad" by sending money to the bank accounts of the Elehssan Society in Gaza, Bethlehem and Jenin. Government Exhibit 214 also makes clear that the "jihad" that donations to Elehssan will promote is one of violence, not of innocent charity.

The evidence also established that the activities of the Elehssan Society were designed to further the PIJ's ultimate goal of expelling the inhabitants of Israel and to support its recruitment of members to commit violent activities to accomplish that goal. The PIJ Bylaws seized at WISE established that the PIJ's provision of financial support for its prisoners and martyrs and for its health care, education and other outreach efforts are integral in effectuating its violent attacks against Israelis by facilitating recruitment and retention of members and popular support for their violence (GX 400 at 32-33) (describing the "Committee for Current Action"). These activities are entirely consistent with those conducted by the Elehssan Society. Compare id. at 33 with GX 611.

Matthew Levitt further testified that the PIJ and other Islamist terrorist organizations operating in the Occupied Territories conduct social and purportedly "charitable" activities to facilitate personnel recruitment and generally win popular support for their groups. By attracting more members and supporters and providing pensions and services to those members, the PIJ makes its violence possible by recruiting people to carry out future attacks and providing them with assurance that their families will be taken care of after they are killed or imprisoned. Fawaz Damrah explained this best at the September 27, 1991 ICP event in Cleveland:

> If only we read the Messenger's, God bless him and grant him salvation, words, whereupon he says, "Whoever equipped a raider for the sake of God, he himself has raided." "Equipped a raider" ... the one who supports a mujahid, a raider, gains an honorarium. It is as if he himself has raided. . . . . He who reads the Quran is not surprised at Islam's call to spend because, lacking outlay, the mujahid, on his way to battle, could never imagine there would be anyone to support his family after falling on homeland soil, or after falling for the cause of God, the Glorious and Sublime. Thus, we will have this recurring suspicion a hundred times before carrying out any military operation: "What will happen to my children and dependents?"

GX 566. Damrah restated his explanation of economic jihad at the Currie High School event, an event that defendant Fariz (and defendant Al-Arian) attended:

> Every day fall (sic), rather, martyrs ascend to the Higher Host, their souls ascend to the Higher Host. Yes, every day that a martyr (sic) ascends to the Higher Host, it would be incumbent upon every Muslim to donate $1.00 for every martyr whose soul ascends to the Higher Host. . . . The martyr who sets off to battle believes that there are Muslims who will go to his home and pat the heads of his son and wife, saying "We are Muslims".

See GX 567.

Furthermore, the evidence showed that Defendant Fariz knew that the people at the Elehssan Society to whom he directly sent money (Salah Abu Hassanein and Naim Nasser Bulbol) were affiliated with the PIJ or would route the money to people affiliated with the PIJ. For example, Defendant Fariz listed Salah Abu Hassanein as the contact person for www.qudscall.com, an PIJ official website that contained, among other things, the 55 page chart describing 196 violent attacks against Israelis by PIJ members between 1984 and 1999 (GXs 210 and 693).[7] Defendant Fariz also received official PIJ documents (including at least one internal PIJ memorandum) and other PIJ articles from Hassanein by e-mail in 2002 and 2003, the same time period in which he was sending

[7]The Qudscall website was active until September 2001 (GX 174-C). It then morphed into Qudsway.com.

funds directly to Hassanein. See, e.g., GXs 789, 790, 791 and 793. For example, the day after defendant Fariz sent Hassanein more than $3,000, Hassanein emailed an up-to-date PIJ article providing statistics on how many Israelis the PIJ had murdered since September 2000 (GX 793). In September 2002, Defendant Fariz even received confidential insider information about Ramadan Shallah's health from Hassanein – information that was deliberately being withheld from the media (GX 1142). Only a trusted, highly-placed PIJ member would have this type of confidential information, and he in turn would only pass such information along to another trusted PIJ member.[8]

Defendant Fariz's own words and conduct provide evidence that he knew that the Elehssan Society was connected with the PIJ. First, in Government Exhibit 1118, defendant Fariz discussed with Ghassan Ballut how the Elehssan Society takes care of its own. Most importantly, in Government Exhibit 1163, defendant Fariz directed Hassanein to use another name for the Elehssan Society "that [he] can use here because this name is rejected here." At the time of this call, the only organization publicly identified as a designated terrorist organization was the PIJ, not Elehssan. Nonetheless, defendant Fariz and Hassanein made up a fake name to put on receipts and generated a fake list of purported recipients to provide to unsuspecting donors (GXs 1164 and 794.) This call provides ample evidence that defendant Fariz knew that the Elehssan Society was linked to the PIJ.

[8]Hassanein also kept defendant Fariz current on the controversy of the competing HAMAS and PIJ claims of responsibility for the PIJ attack at Hebron (GX 694 and 1178). Defendant Fariz then contacted Osama Abu Irshaid to cajole him into publishing an article correcting his newspapers attribution of the attack as a joint PIJ-HAMAS attack (GX 1184; CX 21).

All this evidence also provides sufficient evidence of defendant Fariz's intent to further the PIJ's illegal activities. First, the evidence clearly established that defendant Fariz knew about and supported the PIJ's murderous attacks throughout the relevant time period. See, e.g., GX 161-A (October 2001 posting to the Qudsway.com guest book praising the soul of PIJ martyrs and Fathi Shiqaqi and November 2001 posting praising the PIJ terrorist who murdered two people, including one United States citizen, and wounded 46 in a shooting attack on a public bus at French Hill in Jerusalem); GX 673 (PIJ newsletter detailing numerous attacks in 1993 found at defendant Fariz's home in February 2003); GX 918 (1/22/95 telephone conversation in which defendant Fariz asked Sulieman Odeh to announce the Beit Lid bombing at a party); GX 1184 (December 2002 communication in which defendant Fariz argued with Osama Abu Irshaid about correcting the Al-Zaitonah newspaper's attribution of the Hebron attack to PIJ and HAMAS).

Second, the evidence of his deceptive fundraising and efforts to hide the source and recipient of his money transfers provide compelling evidence of his understanding that he was furthering the PIJ's violent activities. FISA communications, such as Government Exhibit 1163, and witness testimony, including that of Dr. Mohammed Joud, established that defendant Fariz deliberately hid from donors the fact that their money would be sent to the Elehssan Society. After the first MEFS money transfer in August 2001, defendant Fariz never again sent money directly in the name of the Elehssan Society (GX 198 and 605-D). This was at the suggestion of defendant Al-Arian (GX 1177). Nor did he ever send money directly from his or American Muslim Care Network's bank account to that of the Elehssan Society or Hassanein. To the

contrary, he repeatedly rejected Hassanein's request that he send funds directly to a bank account and instead used Middle East Financial Services as an unnecessary and costly intermediary (GX 1163 and 1166). Even after he moved to Florida, he insisted on using MEFS, even though it required cumbersome, time-consuming arrangements.

This and other evidence provides ample basis for a reasonable jury to find the defendants guilty on Counts One, Three and Four. Contrary to defendant Fariz's assertion, it does not matter whether evidence was presented that any particular dollar that defendant Fariz sent was used to buy weapons for an attack. Under the Court's own order, what matters is whether the evidence provided a basis for finding that defendant Fariz intended that his financial support would further the PIJ's illegal activities. United States v. Al-Arian et al., 308 F.Supp.2d 1322, 1339 (MDFL 2004). As explained above, defendant Fariz knew that the Elehssan Society was a component of the PIJ, and he knew that the function of the Elehssan Society was to provide services to PIJ members to aid in recruitment and retention. Salah Dauod's personal belief, based on defendant Fariz's self-serving representations to him, that defendant Fariz was sending the money for charity is not conclusive evidence of defendant Fariz's intent. See Doc. 1478 at 5-6. Nor is it relevant that much of the money was obtained and sent during Ramadan or other holidays; the evidence established that Muslims are more likely to donate money during these holidays.

Defendant Fariz's additional arguments regarding his dealings with particular specially designated terrorists involved in Count Four are also misplaced. See Doc. 1478 at 8-10. First, defendant Fariz's conversion of the format of the videotapes of PIJ terrorists' funerals in March 1995 was prohibited by the IEEPA regulations. Ramadan

Shallah may have made the request that he convert them, but Government Exhibit 954A demonstrates that the videotapes were PIJ videotapes. It is clear from Fathi Shiqaqi's responses to Ramadan Shallah that he had seen the videotapes, knew they were being publicly distributed, and had some participation in their creation. See GX 954A at 7 ll. 16 - p. 8 ll. 22. Since the PIJ and Fathi Shiqaqi had both been designated as a specially designated terrorist at the time that defendant Fariz converted the videotapes from European to American format, he did in fact deal in the property of a specially designated terrorist. See GX 954A at 1, 7. Moreover, the jury instructions provided:

> Transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, . . . by a United States person, however, are prohibited. Such prohibited transactions include, without limitation, . . . provision of services to market produce or co-produce, create or assist in the creation of information and informational materials. . . .

By converting the format of the videotapes without obtaining the requisite license from the Department of the Treasury, defendant Fariz created a version of the videotape that was compatible with American format VCR machines. This conduct contravened IEEPA regulatory prohibitions.

Defendant Fariz also actively assisted in providing a benefit to the PIJ in connection with the Immigration bail hearing for PIJ co-conspirator Mazen Al-Najjar. On August 8, 2000, defendant Al-Arian asked defendant Fariz to arrange an interview of Abd Al Aziz Awda, the results of which were intended to be used by Al-Najjar as evidence in the hearing (GX 1081). Defendant Fariz acknowledged that he knew who Awda was (GX 1081 at 3). On August 9, 2000, defendant Fariz advised defendant Al-

Arian that he had arranged for the interview and asked defendant Al-Arian what questions should be asked (GX 1082). Defendant Al-Arian told defendant Fariz that Awda was "a sheikh, whom we invited, and he has no relationship to anyone." Id. at 2. Defendant Fariz responded that Awda was "a prominent scholar ... only." Id. at 3. Given Awda's appearance and comments at Currie High School in September, 2001, both Al-Arian and defendant Fariz's characterization of Awda's biography was false. Nevertheless, later that same day, defendant Fariz reported to defendant Al-Arian the results of the interview of Awda by the Al-Mahjar newspaper in which Awda was described as nothing more than a "prominent leader of Islamic enterprises in Palestine" (GX 1204 at 3). There was no mention of any association with the PIJ. Defendant Fariz's conduct is a clear effort to provide a valuable service to the PIJ, namely, the participation in the creation of a false and misleading biography of Awda for the possible use by Al-Najjar, an incarcerated PIJ Shura Council member.

With respect to Count Twenty, defendant Fariz argues that there was no evidence that defendant Fariz engaged in the telephone call admitted as Government Exhibit 1163 with the intent to further the unlawful activity of money laundering or extortion. This argument too is without merit. Government Exhibit 1163 is an international telephone call between defendant Fariz and Salah Abu Hassanein on November 10, 2002. Defendant Fariz engaged in the telephone call with the intent to promote money laundering because in the call he set up a $7,000 money transfer to Hassanein for use by the Elehssan Society (GX 1163 at 3-5). Thereafter, defendant Fariz made the $7,000 transfer to Hassanein through Middle East Financial Services (GXs 198, 606-C, 1167, 1168, 1169 and 1200). This evidence is sufficient to establish

the violation of the Travel Act alleged in Count Twenty, at least with respect to the "promotion or facilitation" prong of the statute.[9] 18 U.S.C. § 1952(a)(3).

Last, defendant Fariz's argument with respect to Counts Thirty-Three and Thirty-Eight through Forty are misplaced under controlling caselaw. Counts Thirty-Three and Thirty-Eight through Forty allege international money laundering with the intent to promote the provision of material support to an FTO or violation of IEEPA. As explained above, the Court cannot consider the jury's verdict of acquittal on substantive material support counts to determine the sufficiency of the evidence on the money laundering counts. See also United States v. Richards, 234 F.3d 763, 768 (1st Cir. 2000). In any event, the jury did not reach a verdict as to any counts alleging violation of IEEPA, so defendant Fariz's argument fails on that prong alone.

Moreover, courts have upheld money laundering charges in cases where the defendant was not convicted of the underlying specified unlawful activity. See, e.g., United States v. De La Mata, 266 F.3d 1275, 1292 (11th Cir. 2001); Richards, 234 F.3d at 768-69. As the De La Mata court explained in the context of a money laundering offense involving the proceeds of unlawful activity: "A conviction for money laundering does not require proof that the defendant committed the specific predicate offense." Id. at 1292; see also Richards, 234 F.3d at 768-69. In the case of § 1956(a)(2)(A), it merely requires that the defendant intend to promote the predicate offense.

[9]Moreover, defendant Fariz engaged in the call to promote future acts of money laundering. He asked Hassanein to provide fake receipts and recipient lists not only so that he could pacify donors requests, but also to gain the donors' trust and facilitate future fundraising. See GX 1163 at 7 ll. 9 - 9 ll. 7.

CONCLUSION

Because the government presented ample evidence for a reasonable juror to find defendants Al-Arian and Fariz guilty beyond a reasonable doubt on the remaining charges, the Court should deny the defendants' motions in their entirety.

Respectfully submitted,

PAUL I. PEREZ
United States Attorney

By: */s Terry A. Zitek*
Terry A. Zitek
Executive Assistant U. S. Attorney
Florida Bar No. 0336531
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6336
Facsimile: (813) 274-6108
E-mail: terry.zitek@usdoj.gov

By: */s Alexis L. Collins*
Alexis L. Collins
Trial Attorney, U.S. Department of Justice
United States Attorney No. 089
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6130
Facsimile: (813) 274-6108
E-mail: Alexis.Collins3@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Kevin T. Beck
M. Allison Guagliardo
William B. Moffitt
Linda G. Moreno
Wadie E. Said

/s Terry A. Zitek

Terry A. Zitek
Executive Assistant U. S. Attorney
Florida Bar No. 0336531
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6000
Facsimile: (813) 274-6108
E-mail: terry.zitek@usdoj.gov

/s Alexis L. Collins

Alexis L. Collins
Trial Attorney, U.S. Department of Justice
United States Attorney No. 089
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6130
Facsimile: (813) 274-6108
E-mail: Alexis.Collins3@usdoj.gov